

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 922

Introduced by Dubas, 34.

Read first time January 14, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 57-703, 57-705, 74-1320, and 74-1321, Reissue Revised
3 Statutes of Nebraska; to adopt the Cellulosic Biomass
4 Renewable Energy Initiative; to provide incentives for
5 ethanol production; to impose an excise tax on natural
6 gas; to change taxes on railroads and oil severed from
7 land in Nebraska; to provide a penalty; to provide
8 operative dates; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 15 of this act shall be known
2 and may be cited as the Cellulosic Biomass Renewable Energy
3 Initiative.

4 Sec. 2. The Legislature finds that the advancement
5 of cellulosic technology for the Nebraska ethanol industry is
6 important to sustain an industry that is operating in a highly
7 competitive market with neighboring states. The Cellulosic Biomass
8 Renewable Energy Initiative is designed to make Nebraska the
9 nation's center for advanced ethanol production and biofuel
10 technology. Nebraska must be in a position to compete with
11 other states as mandates in the federal Energy Independence
12 and Security Act of 2007 take effect. The initiative will
13 provide a flexible package of incentives for applied research,
14 demonstration projects, and production, all aimed at increasing
15 private-sector investment and attracting federal funding to further
16 leverage Nebraska's resources that will be delivered through a
17 market-oriented, competitive program that will foster statewide
18 economic development.

19 Sec. 3. For purposes of the Cellulosic Biomass Renewable
20 Energy Initiative:

21 (1) Terms defined in the federal Energy Independence and
22 Security Act of 2007, as such act existed on January 1, 2008,
23 have the same meaning when used in the Cellulosic Biomass Renewable
24 Energy Initiative;

25 (2) Board means the Cellulosic Biomass Renewable Energy

1 Board;

2 (3) Cellulosic biomass ethanol means ethanol derived from
3 any lignocellulosic or hemicellulosic matter that is available on a
4 renewable or recurring basis; and

5 (4) Project means any part of the production of
6 cellulosic biomass ethanol.

7 Sec. 4. The Cellulosic Biomass Renewable Energy Board
8 is created. The board shall consist of three members appointed
9 by the Governor. One member shall be appointed from the Nebraska
10 Ethanol Board, one member shall be appointed from the Department of
11 Economic Development, and one member shall be appointed from the
12 Department of Agriculture. Members shall serve at the pleasure of
13 the Governor.

14 Sec. 5. The board shall review and approve applications
15 for incentives under the Cellulosic Biomass Renewable Energy
16 Initiative and award incentives within four categories:

- 17 (1) Cost-share grants;
18 (2) Loans;
19 (3) Production incentives; and
20 (4) General grants.

21 Sec. 6. (1) In order to utilize the incentives set forth
22 in the Cellulosic Biomass Renewable Energy Initiative, a person
23 shall file an application, on a form developed by the board,
24 requesting an agreement with the board.

25 (2) The application shall contain:

1 (a) A written statement describing the plan for a project
2 in this state;

3 (b) Sufficient documents, plans, and specifications as
4 required by the board to support the plan and to define the
5 project; and

6 (c) A nonrefundable application fee of one hundred
7 dollars. The fee shall be credited to the Cellulosic Biomass
8 Renewable Energy Fund.

9 (3) The application and all supporting information shall
10 be confidential except for the name of the applicant and the
11 location of the project.

12 (4) An application must be complete to establish the date
13 of the application. An application shall be considered complete
14 once it contains the items listed in subsection (2) of this
15 section, regardless of the board's additional needs pertaining to
16 information or clarification in order to approve or not approve the
17 application.

18 (5) Once satisfied that the plan in the application
19 defines a project consistent with the purposes stated in the
20 initiative in one or more qualified activities within this state,
21 and that the applicant and the plan will qualify for incentives
22 under the initiative, the board shall approve the application.

23 (6) After approval, the applicant and the board shall
24 enter into a written agreement. The applicant shall agree to
25 complete the project, and the board, on behalf of the State of

1 Nebraska, shall designate the approved plan of the applicant as a
2 project and, in consideration of the applicant's agreement, agree
3 to allow the applicant to use the incentives contained in the
4 agreement. The application, and all supporting documentation, to
5 the extent approved, shall be considered a part of the agreement.

6 (7) An applicant and the board may enter into agreements
7 for more than one project and may include more than one project
8 in a single agreement. The projects may be either sequential or
9 concurrent. A project may involve the same location as another
10 project.

11 Sec. 7. (1) The board shall use the following criteria in
12 approving applications for incentives and awarding incentives under
13 the Cellulosic Biomass Renewable Energy Initiative:

14 (a) No one project or applicant for incentives may
15 receive more than twenty percent of the total funds available under
16 the act;

17 (b) An applicant may receive awards from one or more of
18 the incentive types;

19 (c) All incentives must be used for projects that
20 establish biofuel production facilities in Nebraska which obtain at
21 least fifty percent of their biomass feedstock from Nebraska farm
22 land;

23 (d) Projects must be completed within three years after
24 the incentive award;

25 (e) A twenty-five percent cost-share is required for

1 grant funds. Cost share contributions may not consist of other
2 state funds, but may be derived from local or federal sources;

3 (f) Loans shall not be provided in excess of twenty-five
4 percent of the total cost of the project; and

5 (g) Applicants should leverage the incentives with
6 private and federal funds to maximize the impact of state funds.

7 (2) In addition to the criteria listed in subsection (1)
8 of this section, the board shall consider the following:

9 (a) The probability of success in establishing a biomass
10 biofuel enterprise that is economically and environmentally viable
11 over the long term;

12 (b) The background of the applicant and key personnel;

13 (c) The financial resources of the applicant;

14 (d) The applicant's history of business and research
15 accomplishment;

16 (e) The applicant's investment in the project;

17 (f) Federal or other funding provided to the project or
18 applicant;

19 (g) The environmental impact of the project;

20 (h) The economic benefits to Nebraska if the project is
21 successful; and

22 (i) The level of technology innovation demonstrated by
23 the project or applicant.

24 Sec. 8. The purpose of the cost-share grant incentive is
25 to provide funds to construct pilot facilities capable of producing

1 transportation-grade ethanol from cellulosic feedstocks in Nebraska
2 within three years after award of the grant or facilities that
3 product syngas, synthetic oil, or cogeneration of electricity
4 from biomass consistent with meeting the 2013 RFS Standard under
5 the federal Energy Independence and Security Act of 2007. The
6 grants shall be used to establish pilot-scale cellulosic biomass
7 ethanol production that will eventually lead to commercial-scale
8 production. For purposes of this section, a project shall be
9 considered pilot-scale if it is no larger than ten percent of the
10 size of a commercial-scale operation. Applications for grants may
11 be accepted for three years after the effective date of this act.

12 The following specific requirements apply to grant
13 applicants under the Cellulosic Biomass Renewable Energy Initiative
14 in addition to the requirements under sections 6 and 7 of this act:

15 (1) An applicant shall have the technical, financial,
16 business, and organizational capability to construct a pilot-scale
17 lignocellulose-to-ethanol facility and intend to use the
18 information derived from the project's operation to develop a
19 commercial-scale production facility and may be an existing ethanol
20 producer;

21 (2) An applicant shall be encouraged to team with other
22 private and public organizations, including public power districts.
23 An applicant shall be a corporation or cooperative which is able to
24 implement the commercialization effort and shall be a significant
25 part of any team of cooperating organizations;

1 (3) A proposed project shall focus on demonstration
2 and commercialization of cellulosic biomass ethanol production
3 technology, rather than research and development; and

4 (4) Grant funds may only be used for construction
5 of a cellulosic pilot facility, including design, engineering,
6 equipment, permitting, legal, and other costs associated with
7 the construction and commissioning of the pilot facility. Costs
8 associated with constructing any building housing the pilot
9 facility and the operation and maintenance of the facility shall
10 not be eligible costs, but these costs may be considered as part of
11 the cost-share requirement.

12 Sec. 9. The purpose of the loan incentive is to
13 facilitate the construction of commercial-scale cellulosic biomass
14 ethanol production facilities. A loan shall supplement any federal
15 cellulosic ethanol loan guarantee available to an applicant. A
16 loan shall only be provided to an applicant that has obtained
17 preliminary approval of the federal guarantee. All loan repayments
18 shall be credited to the Cellulosic Biomass Renewable Energy Fund.

19 Sec. 10. Applicants approved for a production incentive
20 shall receive an incentive of twenty cents per megajoule in
21 each gallon of cellulosic biomass ethanol produced at a Nebraska
22 facility. An applicant shall not receive more than twenty percent
23 of the available production incentive dollars available or one
24 million five hundred thousand dollars in a calendar year. The
25 incentive shall be available for a five-year period beginning on

1 the effective date of this act and may be combined with federal and
2 other incentives.

3 Sec. 11. General grants may be made by the board to
4 provide added incentives or assistance in extraordinary project
5 circumstances. These grants shall be used at the discretion of
6 the board to address particular project opportunities or unforeseen
7 obstacles deemed critical in order for a project selected for an
8 incentive under the grant or loan incentive to succeed. If these
9 grants are not made within the three years after the effective date
10 of this act, the funds available shall be used for other incentives
11 under the Cellulosic Biomass Ethanol Development Act.

12 Sec. 12. (1) The board shall submit an annual report to
13 the Legislature no later than July 15 of each year.

14 (2) The report shall list (a) the agreements which have
15 been signed during the previous calendar year, (b) the agreements
16 which are still in effect, (c) the identity of each person who is
17 party to an agreement, and (d) the location of each project.

18 (3) The report shall also state (a) the specific
19 incentive options applied for under the Cellulosic Biomass
20 Renewable Energy Initiative, (b) the incentives awarded under the
21 initiative, and (c) the production credits outstanding under the
22 initiative.

23 (4) The report shall provide an explanation of the review
24 process of the board in approving and rejecting applications or
25 the award of incentives. The report shall also specify the median

1 period of time between the date of application and the date the
2 agreement is executed for all agreements executed by December 31 of
3 the prior year.

4 Sec. 13. The board shall adopt and promulgate rules and
5 regulations to carry out the Cellulosic Biomass Renewable Energy
6 Initiative.

7 Sec. 14. The Cellulosic Biomass Renewable Energy Fund is
8 created. The fund shall be used to provide the incentives permitted
9 under the Cellulosic Biomass Renewable Energy Initiative. The board
10 may accept gifts or grants and deposit such money in the fund. Any
11 money in the fund available for investment shall be invested by the
12 state investment officer pursuant to the Nebraska Capital Expansion
13 Act and the Nebraska State Funds Investment Act.

14 Sec. 15. (1) Commencing on the first day of the first
15 calendar quarter after approval of an application under section 5
16 of this act, an excise tax is imposed on natural gas imported to
17 Nebraska for industrial use. The tax shall be paid by the importer.
18 The rate shall be one cent per one million British thermal units.

19 (2) The tax shall be remitted to the Department of
20 Revenue for credit to the Cellulosic Biomass Renewable Energy
21 Fund. Payment of the tax shall be accompanied by a report
22 setting forth the number of British thermal units imported for
23 industrial use during the reporting period. The report shall be on
24 a form prescribed by the department and shall include such other
25 information as the Tax Commissioner deems necessary. The tax and

1 report shall be remitted within thirty days after the end of each
2 quarter.

3 (3) Any person violating this section shall be guilty of
4 a Class III misdemeanor.

5 (4) Whenever the unobligated balance in the fund exceeds
6 ten million dollars, the Department of Revenue shall suspend
7 collection of the excise tax. If, after suspension of the
8 collection of such excise tax, the balance of the fund falls
9 below five million dollars, the Department of Revenue shall resume
10 collection of the excise tax.

11 (5) The Tax Commissioner shall adopt and promulgate rules
12 and regulations to carry out this section.

13 Sec. 16. Section 57-703, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 57-703 (1) The taxes levied by section 57-702 shall be
16 levied upon the value of the resources severed, and shall be paid
17 at the rate of three percent of the value of nonstripper oil and
18 natural gas, except that oil produced from properties producing
19 stripper oil shall be subject to a two percent severance tax.

20 (2) In addition to the rate in subsection (1) of this
21 section, a tax at the rate of two percent of the value of
22 nonstripper oil severed shall be levied. Whenever the unobligated
23 balance in the Cellulosic Biomass Renewable Energy Fund exceeds
24 ten million dollars, the collection of the excise tax under
25 this subsection shall be suspended. If, after suspension of the

1 collection of such excise tax, the balance of the fund falls
 2 below five million dollars, the collection of the excise tax shall
 3 resume.

4 (3) The value of oil and natural gas shall be computed
 5 immediately after such severance at the place where the same were
 6 severed.

7 Sec. 17. Section 57-705, Reissue Revised Statutes of
 8 Nebraska, is amended to read:

9 57-705 (1) All severance taxes levied by Chapter 57,
 10 article 7, shall be paid to the Tax Commissioner. He or she shall
 11 remit all such money received to the State Treasurer. All such
 12 money received by the State Treasurer pursuant to subsection (2)
 13 of section 57-703 from nonschool lands shall be credited to the
 14 Cellulosic Biomass Renewable Energy Fund, and the money received
 15 pursuant to subsection (1) of such section shall be credited to a
 16 ~~fund to be known~~ as the Severance Tax Fund. An amount equal to
 17 one percent of the gross severance tax receipts received pursuant
 18 to subsection (1) of such section, excluding those receipts from
 19 tax derived from oil and natural gas severed from school lands,
 20 credited to the fund shall be credited by the State Treasurer, upon
 21 the first day of each month, and shall inure to the Severance Tax
 22 Administration Fund to be used for the expenses of administering
 23 Chapter 57, article 7. ~~The balance of the Severance Tax Fund~~
 24 ~~received~~ severance tax receipts from school lands shall be credited
 25 by the State Treasurer, upon the first day of each month, and shall

1 inure to the permanent school fund.

2 (2) Of the balance of the Severance Tax Fund received
3 from other than school lands (a) the Legislature may transfer
4 an amount to be determined by the Legislature through the
5 appropriations process up to three hundred thousand dollars for
6 each year to the State Energy Office Cash Fund, (b) the Legislature
7 may transfer an amount to be determined by the Legislature through
8 the appropriations process up to thirty thousand dollars for
9 each year to the Public Service Commission for administration of
10 the Municipal Rate Negotiations Revolving Loan Fund, and (c) the
11 remainder shall be credited and inure to the permanent school fund.

12 Sec. 18. Section 74-1320, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 74-1320 (1) There is hereby levied an excise tax on each
15 railroad transporting freight in the State of Nebraska. Such tax
16 shall be levied at the rate of seven and one-half cents for each
17 train mile operated by such railroad in the state and one hundred
18 dollars for each public grade crossing on the line of such railroad
19 in the state. Such tax shall be independent of any assessment
20 of costs for benefits received by the railroad from projects for
21 the construction, rehabilitation, relocation, or modification of
22 railroad grade separation facilities. The Department of Revenue
23 shall collect the tax due pursuant to this section from each
24 railroad transporting freight within the state.

25 (2) In addition to the excise tax levied in subsection

1 (1) of this section, there is levied an excise tax at the rate
2 of seven and one-half cents for each train mile operated by
3 such railroad in the state. Whenever the unobligated balance in
4 the Cellulosic Biomass Renewable Energy Fund exceeds ten million
5 dollars, the collection of the excise tax under this subsection
6 shall be suspended. If, after suspension of the collection of
7 such excise tax, the balance of the fund falls below five million
8 dollars, the collection of the excise tax shall resume.

9 ~~(2)~~ (3) On each March 1, each such railroad shall submit
10 to the Department of Revenue a report of its total train miles
11 operated within the state during the previous January 1 through
12 December 31 and the number of public grade crossings on its line in
13 the state at the close of the previous year. All taxes shall be due
14 on the date of reporting and shall be delinquent if not paid on a
15 quarterly basis on April 1 and each quarter thereafter. Delinquent
16 quarterly payments shall draw interest at the rate provided for in
17 section 45-104.02, as such rate may from time to time be adjusted.

18 ~~(3)~~ (4) As used in this section, train mile shall mean
19 each mile traveled by a train in this state regardless of the
20 number of cars in such train.

21 Sec. 19. Section 74-1321, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 74-1321 All revenue derived from the tax levied pursuant
24 to subsection (1) of section 74-1320, together with such other
25 funds as may be appropriated by the state for the same purposes,

1 shall be placed in the Grade Crossing Protection Fund and may be
2 allocated and expended in the same manner as other money in such
3 fund for the purpose of constructing, rehabilitating, relocating,
4 or modifying railroad grade separation facilities. All revenue
5 derived from the tax levied pursuant to subsection (2) of such
6 section shall be credited to the Cellulosic Biomass Renewable
7 Energy Fund.

8 Sec. 20. Sections 15, 16, 17, 18, 19, and 21 of this act
9 become operative on January 1, 2009. The other sections of this act
10 become operative on their effective date.

11 Sec. 21. Original sections 57-703, 57-705, 74-1320, and
12 74-1321, Reissue Revised Statutes of Nebraska, are repealed.